



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: The Futures Group International--Reconsideration

File: B-270397.3

Date: June 11, 1997

Paul Shnitzer, Esq., Crowell & Moring, for the protester.

Jerold D. Cohen, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Request for reconsideration is denied where it essentially repeats arguments made during the consideration of the original protest and expresses disagreement with the decision.

DECISION

The Futures Group International (TFGI) asks that we reconsider our decision in The Futures Group Int'l, B-270397.2, May 16, 1996, 97-1 CPD ¶ ___, in which we denied the firm's protest of the technical and cost evaluations, and the resultant contract award to Management Sciences for Health (MSH), under request for proposals (RFP) No. 521-95-005, issued by the Agency for International Development (AID). The solicitation sought offers for a cost-plus-fixed-fee contract to implement the Health Systems (HS) 2004 Project in Haiti.¹

We deny the reconsideration request.

Technical Evaluation

TFGI protested that AID awarded the contract to an offeror that proposed a Chief of Party (COP) candidate who did not have long-term COP experience leading multisectoral health programs in developing countries, which TFGI maintained was a prerequisite for award. The protester argued that this prerequisite was evidenced by AID's advice to TFGI that the offeror had to propose a candidate with long-term COP experience in a multisectoral technical assistance effort in a developing country. The protester noted that AID rejected TFGI's first candidate because she did not have COP experience and rejected TFGI's second candidate because he lacked long-term experience. TFGI further noted that its third candidate met all qualifications but the offer nevertheless was downgraded in the final evaluation with respect to the COP-related subcriteria. In contrast, TFGI complained, not only did

¹The HS 2004 Project is intended to provide support to the government of Haiti in reestablishing and restructuring essential health services throughout the country.

AID not require that MSH's candidate be replaced because he did not have COP experience, but MSH's score for the COP-related subcriteria increased throughout the evaluation. TFGI concluded that the competition therefore was not conducted on an equal basis.

AID responded that the RFP did not expressly require COP experience, and that the agency did not require COP experience in the course of negotiations. We agreed with AID.

In requesting reconsideration, TFGI takes issue with our assessment of the negotiation and evaluation process. The firm argues that we were factually and legally wrong in concluding that the offerors were treated fairly with respect to the COP-related negotiations; TFGI complains that the reasons AID rejected TFGI's first two COP candidates similarly should have led to the rejection of MSH's candidate.

In resolving the protest, we examined the RFP requirements, evaluation records, and records of and arguments regarding the negotiations with the two offerors. We concluded that neither the RFP, nor AID during negotiations, established long-term COP experience in a multisectoral health effort in a developing country as a prerequisite for award so that either MSH's offer could not be accepted because of its candidate's lack of experience in that regard or TFGI was misled into responding to a more restrictive requirement than was applied to MSH. In the reconsideration request TFGI in essence repeats arguments it made previously and expresses disagreement with our decision. Under our Bid Protest Regulations, to obtain reconsideration, the requesting party must show that our prior decision may contain either errors of fact or law or present information not previously considered that warrants reversal or modification of our decision. 4 C.F.R. § 21.14(a) (1996). The repetition of arguments made during our consideration of the original protest and statements of disagreement with our decision do not meet this standard. R.E. Scherrer, Inc.--Request for Recon., B-231101.3, Sept. 21, 1988, 88-2 CPD ¶ 274 at 2.

Evaluation of Experience

TFGI, focusing on AID's evaluation of the firm's last COP candidate, takes issue with our finding that there was no basis to question the relationship of the COP evaluations to the RFP's two COP-related subcriteria.

The RFP's three technical evaluation factors--Quality and Responsiveness of Proposal and Technical Approach; Institutional Capabilities; and Personnel Capabilities--were worth 80 percent of the offeror's score. The RFP listed 13 personnel positions, with the COP/Senior Health Administrator the only individual specified as "key" (i.e., essential to the work); the COP was to provide guidance and direction for the project's implementation and for all contractor personnel; serve as key counterpart to the Haitian Ministry Project Coordinator; and

act as contractor representative. The two subcriteria in the Personnel Capabilities factor that concerned the COP were

"I. Qualifications of Senior Health Administrator, Health Policy Advisor, the Public Sector Financial Management Advisor and the HIS [Health Information Systems] advisor

a. Type and number of years of relevant experience in integrated health project implementation and the provision of technical assistance to the public sector.

b. (for Senior Health Administrator) Type and number of years as team leader of a large, complex, multidisciplinary technical assistance effort in a developing country."

TFGI asserts that its final candidate met all the qualifications reflected in the wording of the subcriteria, particularly the second one.

The subcriteria focused on type, extent, and relevance of experience, public sector technical assistance, and leadership capabilities with respect to complex overseas efforts. The evaluation of MSH's final candidate--the interview and reference checks--established him as an excellent candidate in all respects. While AID recognized that TFGI's third candidate had certain highly relevant experience, the agency had serious concerns about the individual's management style; understanding of the contractor's role; understanding of aspects of TFGI's proposal; ability to resolve conflicts and disagreements; unwillingness to take personal responsibility; and difficulties in establishing effective working relationships, particularly with foreign governments.

The evaluation of proposals in a negotiated procurement must be both reasonable and in accord with the stated evaluation criteria. See Mobility Sys. and Equip. Co., B-261072, Aug. 8, 1995, 95-2 CPD ¶ 66 at 4. Moreover, an agency properly may consider evaluation elements that logically are encompassed by the evaluation factors and subfactors contained in an RFP. Laidlaw Envtl. Servs. (GS), Inc., B-271903, Aug. 6, 1996, 96-2 CPD ¶ 75 at 4. In our view, expressed in denying TFGI's protest, there was nothing improper in AID's taking its concerns as summarized above into this aspect of proposal evaluation; TFGI's disagreement in that regard does not establish that our conclusion was in error. R.E. Scherrer, Inc.--Request for Recon., supra.

Evaluation of Fee

The RFP provided that the offeror's cost proposal would be analyzed based on five criteria, worth a total of 20 points, and for realism and reasonableness. The most important criterion was total price--cost plus fixed fee, or cost alone if no fee were

proposed--worth 12 points, while total fee or profit was worth 2 points, with the maximum to be awarded to a proposal that did not include any profit.

The RFP required the contractor to provide a total of \$26.1 million in subgrants or subcontracts to health care providers to provide basic care, and for national programs in family planning, reproductive health, and other efforts. TFGI's proposed fee included the cost to provide that subgrant/subcontract money. TFGI also, however, suggested in its best and final offer (BAFO) alternative funding or reimbursement approaches that would allow TFGI to reduce much of its fee. MSH proposed a fee for its part of the subgrant/subcontract effort, but no fee if it received payment through a letter of credit (LOC) arrangement. The LOC procedure permits a prime contractor to obtain fast repayment from AID of the money passed by subgrant/subcontract. The contracting officer decided to authorize payment by LOC and evaluated MSH's fee accordingly.

TFGI protested that, among other things, it was not fair to accept a no-fee proposal from MSH.

We dismissed this protest issue as untimely. Our Bid Protest Regulations require that a protest of an apparent solicitation impropriety be filed before proposals are due. 4 C.F.R. § 21.2(a)(1) (1996). We found that it should have been evident to TFGI from the terms of the RFP that a nonprofit competitor might well receive 2 full points under that criterion. Moreover, the subject was addressed in an amendment to the RFP issued before initial proposals were due relaying a series of offeror-AID question and answer exchanges. One potential competitor complained that the RFP provision for the cost evaluation criterion in issue that maximum points would be awarded to a proposal that did not include profit "appears to penalize for-profit organizations or any other organization which charges a fee as opposed to an organization that does not charge a fee." AID responded that it believed the RFP provision reasonable. We further noted that TFGI's own business proposal showed that the company knew that the requirement gave nonprofit competitors the flexibility to offer no fee for providing the subgrant/subcontract funds based on LOC procedures whereas for-profits like TFGI did not have that option. We concluded that TFGI clearly knew the evaluation ramifications of the subgrant/subcontract requirement before submitting its initial proposal, so that the protest, filed only after TFGI lost the competition, was untimely in that regard.

On reconsideration, TFGI points out that the RFP simply provided that an offeror proposing no fee would receive the maximum 2 points under that subcriterion, so that if MSH had just offered to perform without fee it would have been entitled to 2 points. TFGI explains its complaint as being that MSH offered to eliminate its fee on a condition that was not part of the RFP--an LOC arrangement--so that giving the firm credit for the fee reduction was not consistent with the solicitation's terms. TFGI argues, "[i]f USAID had intended to accept proposals with no fee conditioned on invoking the LOC procedure, the RFP should have so stated."

In an explanation of its fee in its business proposal, to which TFGI directed our attention in a protest filing, the firm expressly recognized that nonprofit competitors may bid a lower fee or no fee for certain costs, "and plan to use U.S. government subsidized advances and protection for these expenditures (such as Federal Reserve Letters of Credit or similar advance mechanisms)." In that same protest filing, TFGI complained that MSH received almost the full 2 points available, while TFGI was assigned a much lower score "even though it had offered the same type of letter of credit arrangement." It thus appeared from TFGI's protest itself that the firm knew that a no-fee proposal might be accepted, and that such proposal might be based on an LOC arrangement. As stated in our prior decision, pursuant to section 21.2(a)(1) of our Regulations TFGI was obliged to protest the matter before submitting a proposal; TFGI's reconsideration request provides no basis to change our view. In this respect, as we pointed out in our decision, the protest was untimely to the extent TFGI also was protesting AID's evaluation of TFGI's offer inclusive of the full fee, as opposed to accepting TFGI's BAFO suggestions regarding alternative funding and reimbursement methods. TFGI did not mention that aspect of the evaluation to our Office until more than 14 days after the firm should have known the protest basis. 4 C.F.R. § 21.2(a)(2).

The request for reconsideration is denied.

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